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December 13, 2023

Molly C. Dwyer
Clerk of the Court
United States Court of Appeals for the Ninth Circuit
James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103

Re: *Al Otro Lado, Inc., et al. v. Mayorkas et al.*, Nos.
22-55988, 56036 (9th Cir.) Oral Argument Held
November 28, 2023 Response to Defendants'
Federal Rule of Appellate Procedure 28(j) Letter

Dear Ms. Dwyer:

Defendants' December 8, 2023 filing is inconsistent with FRAP 28(j), which permits a party to advise the circuit clerk of "pertinent and significant authorities [that] come to a party's attention ... after oral argument but before decision." Here, Defendants' filing is intended "to address and clarify counsel's responses" to questions during oral argument. Defendants' submission is impermissible under FRAP 28(j) and unnecessary in light of the panel's supplemental briefing order.

Notwithstanding these objections, Plaintiffs note that their own efforts to provide notice to approximately 7,000 potential class members outside the United States, ECF 96 at 2 – for which Plaintiffs are responsible, 1-ER-0048 – have been frustrated by Defendants' delay in developing "AOL-specific processes" to screen and facilitate travel for these individuals. ECF 96 at 2. After the District Court issued its Clarification Order on October 30, 2020, 1-ER-0139-0163, Defendants waited more than two years (until December 15, 2022) to issue draft screening procedures for potential class members outside the United States and almost four more months to finalize these procedures. Without the procedures, Plaintiffs could not provide meaningful notice to class members outside the United States.

Because the data received from Defendants did not include usable contact information for most class members outside the United States, Plaintiffs have worked diligently over the past eight months to conduct broad outreach in the primary countries where these class members reside – Guatemala, Honduras, El Salvador, and Ecuador. Plaintiffs have used social media, email, a

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telephone hotline, and radio broadcasts to conduct this outreach. Plaintiffs have also contracted with a media organization that has created a forthcoming campaign to run radio and social media advertisements in these countries.

Defendants' letter indicates that they have not finished screening approximately 3,400 cases of potential class members inside the United States, ECF 96 at 2, for which Defendants are responsible. 1-ER-0162-0163

The injunction thus continues to serve an important purpose and should be affirmed. To do otherwise would reward the government's initial bait-and-switch for asylum seekers who tried to follow the government's instructions to "come back later," and its subsequent foot-dragging in complying with the Court's order.

Sincerely,

/s/ Ori Lev
Ori Lev
Partner